

# DOCKET SECTION

PRESIDING OFFICER'S  
RULING NO. R97-1/104

FEB 27 3 43 PM '98

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268

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Postal Rate and Fee Changes

Docket No. R97-1

## PRESIDING OFFICER'S RULING DENYING PARCEL SHIPPERS ASSOCIATION MOTION TO COMPEL

(February 27, 1998)

A Parcel Shippers Association (PSA) Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents (Motion) was filed February 18, 1998. The Response of United Parcel Service in Opposition to Parcel Shippers Association Motion to Compel (Response) was submitted February 26, 1998.<sup>1</sup>

The Motion seeks to compel responses to interrogatories PSA/UPS-4, 5, and 6(b)-(e). These questions seek volume, price, revenue, and costing data for domestic, non-expedited parcels delivered by United Parcel Service (UPS). UPS objected to these discovery requests as seeking confidential, sensitive business information, and as burdensome in that much of the requested information is not currently available and would have to be developed through costly and time consuming data collection at numerous sites.

In support of its Motion PSA contends that UPS is a successful private enterprise that has actively participated before the Commission, and that it "ill behooves" such an

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<sup>1</sup> The Response was accompanied by a Motion of United Parcel Service for Late Acceptance of Response of United Parcel Service in Opposition to Parcel Shippers Association Motion to Compel, which is granted.

entity to plead that providing information would be burdensome. Further, PSA suggests that since the Postal Service is called upon to provide cost, revenue, and volume data in Commission proceedings, UPS should have to provide this same information.<sup>2</sup> PSA broadly asserts that the Commission can not properly develop parcel post rates without complete information on UPS, which it characterizes as the only competitor for the delivery of domestic ground parcel shipments to residences. Motion at 2, 3.

The UPS Response correctly points out that the arguments presented by PSA have been analyzed and rejected repeatedly, citing P.O. Ruling R94-1/64 (August 19, 1994), R90-1/66 (September 7, 1990), and R87-1/148 (November 10, 1987). It reiterates that information of this nature has been recognized as clearly proprietary, and commercially sensitive. Additionally, it contends that other firms compete in this market, and that even if the data sought by PSA were available, it would not provide a complete picture.

PSA does not contend that the information it seeks is not proprietary, sensitive business information. It suggests that UPS should have to provide this information because the Postal Service must provide it. But obvious distinctions exist. It is self-evident that the request before this Commission is for changes to Postal Service rates, not to United Parcel Service rates. The Postal Service provides statutory monopoly services in addition to competing with private sector firms, and as a result, it is obligated to satisfy certain obligations imposed on it by statute. United Parcel Service is not so situated.

Finally, the contention that arguments relating to burden should be unavailable to UPS because over the years it has burdened other parties with discovery requests seems to imply that UPS should be punished for its active participation in past Commission proceedings. I feel certain that PSA does not espouse such a punitive

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<sup>2</sup> PSA does accept that as to data on UPS rate discounts and surcharges "we agree that UPS should not be compelled to produce that unless it can be demonstrated that it is clearly relevant to the issues in this proceeding, and necessary to produce a record upon which postal rates can be properly made." Motion at 3.

position, but that might be the result if the broad PSA standard were to be applied generally. Instead, objections based on burden will continue to be evaluated on their merits on a case-by-case basis. In this instance, PSA argues that the information it requests will help the Commission to apply the non-cost factors of the Act, but it does not provide a convincing explanation of why any of the specific information it requests is sufficiently central to any of those factors to overcome either the burden or the sensitive business information objections.

### RULING

1. The Motion of United Parcel Service for Late Acceptance of Response of United Parcel Service in Opposition to Parcel Shippers Association Motion to Compel, filed February 26, 1998, is granted.

2. The Parcel Shippers Association (PSA) Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents, filed February 18, 1998, is denied.

A handwritten signature in black ink, appearing to read 'Edward J. Gleiman', followed by a large, stylized flourish or checkmark.

Edward J. Gleiman  
Presiding Officer